

THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW HAMPSHIRE

IMS HEALTH INCORPORATED, a Delaware)	
corporation and VERISPAN, LLC, a Delaware)	
limited liability company,)	
Plaintiffs,)	
vs.)	Case No. 06-CV-280-PB
KELLY A. AYOTTE, as Attorney General of)	
the State of New Hampshire,)	
Defendant.)	
_____)	

Declaration of Jody Fisher in Support of
Plaintiffs' Motion for Preliminary Injunction

I, Jody Fisher, hereby declare under penalty of perjury that the following information is true and correct:

1. I am over 18 years of age and have personal knowledge of the information provided in this declaration. I am Vice President of Product Management of Verispan LLC ("Verispan") for the Americas region. I have management responsibility for a number of Verispan's products and services throughout North America and Europe, including doctor level services in the United States. I have been employed by Verispan and its affiliates for more than 8 years.

Verispan's Background

2. Verispan is a healthcare information company founded by Quintiles Transnational Corp. and McKesson Corp. Verispan is one of the major providers of healthcare information in the United States. Since its founding as Scott-Levin Associates, Inc. in 1982 and along with its constituent companies formerly known as Kelly-Waldron, SMG, Synergy, and Amaxis, Verispan

has served the pharmaceutical and healthcare industries in the United States with an important source of healthcare information. Verispan contracts to receive nearly half of all U.S. prescriptions and nearly one-quarter of all U.S. electronic medical transactions annually. Verispan captures a sample of data from a near-census of U.S. retail pharmacies. By focusing on breadth of data coverage, Verispan is able to improve insight into prescription and medical activity at the national, regional and individual prescriber level.

3. All of Verispan's proprietary databases are composed of patient de-identified data. This means that Verispan does not collect, process, use or transfer information that contains the identity of patients in any of its subscription services. With the aid of Verispan's vast amount of data, the medical, scientific, pharmaceutical and healthcare management communities are able to track patterns of disease and treatment, conduct outcomes research, implement best practices, and apply health economic analyses. The company's prescriber-identifiable databases are essential to effective implementation of prescription drug recall programs, performance of pharmaceutical market studies, efficient pharmaceutical sales and marketing resource allocation, and assessment of drug utilization patterns (*e.g.*, on-and-off label uses and regional variations in physician prescribing behavior).

4. Verispan's databases are also essential to the effective implementation of health care studies. For example, Verispan's data is currently used by the Department of Health and Human Services through the Food and Drug Administration (FDA). The FDA uses Verispan de-identified prescription data to monitor the incidence by which any two dispensed drugs are used together with one another. This is used by FDA as the backing to many interaction studies they perform in assessing the safety of ethical prescription medications. Verispan's data has also been used by many of its clients to effectively identify eligible prescribers for clinical trials. In these cases accurate prescriber level data is crucial to perform accurate and expeditious clinical

trials, which may provide critical healthcare options to patients in need of alternative treatment.

Prescription Data

5. Retail pharmacies in the United States are primarily composed of chain pharmacies, independent pharmacies, mass merchandisers and food stores with in-store pharmacies, mail order pharmacies, and long term care pharmacies.

6. Retail pharmacies acquire prescription data during the regular course of business. They then license, sell, or transfer patient de-identified prescription information to Verispan.

7. Since 1999, Verispan has been purchasing patient-de-identified prescription information from retail pharmacies, pharmacy benefit managers, prescription clearinghouses, payers, and software vendors located throughout the United States, including the State of New Hampshire, by entering into contracts with these entities directly or through intermediaries. Some of the pharmacy benefit managers, prescription clearinghouses, payers, and software vendors that sell prescription information to Verispan are located outside of New Hampshire and the information they sell includes prescriber-identifiable data pertaining to New Hampshire prescribers. Such sales and purchases take place entirely outside of New Hampshire.

8. The information that Verispan purchases from the New Hampshire pharmacies includes the name of the pharmaceutical product, the form, strength and dosage of the product, the quantity dispensed, and a prescriber identifier number, such as a drug enforcement administration number, which Verispan can link with acquired and licensed resources to obtain the physician's name and address. Pharmacies do not provide patient-identifiable information to Verispan.

9. Currently, Verispan acquires, aggregates and analyzes information relating to billions of prescription transactions per year throughout the United States.

10. Verispan acquires, licenses, sells, uses, or transfers the prescription information

for two distinct purposes:

- a. First, in order to make a profit.
- b. Second, to improve public health and welfare by licensing, selling, and transferring it to pharmaceutical companies and to other persons and entities that devote substantial resources to using the information to improve public health and welfare.

11. Some of the entities to whom Verispan licenses, sells, or transfers the information use the information for advertising, marketing, and promotional purposes. These entities and others use the information for other purposes that are not associated in any way with advertising, marketing, and promotional purposes.

12. Verispan strongly believes that the widespread dissemination and use of the information that it gathers and analyzes improves the health and welfare of consumers.

13. Verispan does not license, sell, use or transfer the information for any deceptive or unfair purposes and does not license, sell, use or transfer the information to persons or entities that they know would use the information for any deceptive or unfair purposes.

The Uses of Verispan's Prescriber Data

14. Upon receipt of patient-de-identified prescription data from a source, Verispan associates combine this prescription data with drug and prescriber reference files for various purposes, including (a) to match each prescription to the correct prescriber, (b) to identify and use the correct name of the prescriber, and (c) to add address, specialty and other professional information about the prescriber to the prescription data. These reference files are created using information obtained from various sources. The American Medical Association's Physician Masterfile is a source of information for reference files on prescribers. The AMA's Masterfile contains demographic, educational, certification, licensure, and specialty information for more than 800,000 active U.S. medical doctors (MDs) and over 90% of the doctors of osteopathy

(DOs), including members and nonmembers alike.

15. Verispan uses patient-de-identified prescription data, together with the reference file information, to produce a variety of databases. Verispan uses these databases to create a number of different reports and services regarding prescribed pharmaceutical products, some of which include prescriber-identifiable information and some of which is aggregated and reported on a broader geographic level. Verispan uses the patient-de-identified prescription data that it acquires to create a number of different forms of information regarding prescribed pharmaceutical products. Verispan then sells the information or makes the information available to third parties for many different uses.

16. The prescription information supplied by Verispan to its pharmaceutical and biotechnology clients are used for many purposes. For example, the information allows these clients to:

- a. Prioritize the release of public safety news alerts based on physician prescribing details,
- b. accelerate innovation through insight into the needs and habits of those whose health the new drugs are designed to improve,
- c. determine which products to develop and license and what acquisitions to consider.
- d. disseminate effectively and quickly vital, life-prolonging information to those prescribers for whom the information is relevant and most useful,
- e. allocate effectively valuable, life-prolonging sample medications to those prescribers whose patients need them most and are more likely to use them,
- f. determine whether a particular prescriber is prescribing products that the pharmaceutical companies have determined to be inappropriate in light of the development of new products that may be more effective, safer, or less expensive,
- g. implement prescription drug recall programs.
- h. evaluate, segment, target, size, compensate and deploy its sales force.

- i. allocate limited marketing resources to individual prescribers in a manner that reduces cost and saves time.
- j. understand managed care's effect on the U.S. pharmaceutical marketplace.

17. Verispan does not sell or market pharmaceutical products or drugs to prescribers.

Thus, Verispan does not itself use the information that it gathers to influence sales or market share of a pharmaceutical product.

18. Patient-de-identified prescription information without prescriber-identifiable information is not an adequate substitute for accurate information regarding the actual prescriptions written by individual physicians for many reasons, including: (a) pharmacies fill prescriptions that come from distant prescribers, (b) information from pharmacies frequently do not include any other proxies by which the geographical location of the physician can be ascertained accurately, (c) information from pharmacies do not include the specialty of the prescribers who wrote the prescription, (d) the information is not useful for all of the uses described in paragraphs 18 above, and (e) significant errors in the information cannot be ascertained.

The Prescription Restraint Law

19. I have reviewed New Hampshire House Bill 1346, 2006 N.H. Laws 328, codified at N.H. Rev. Stat. Ann. 318:47-f & 318:47-g & 318-B:12, IV (2006) (the "Prescription Restraint Law").

20. The statute prohibits pharmacies and other similar entities from continuing to license, sell, use, or transfer prescription records containing prescriber-identifiable to Verispan for certain commercial purposes. The statute imposes severe criminal penalties for violations of the statute and also authorizes civil suits for damages, punitive damages, and injunctive relief to be brought for violations of the statute.

21. The Prescription Restraint Law does not explain how pharmacies and similar entities are to determine whether a particular transaction is for a commercial purposes. It does not, for example, state whether the purpose of the seller of the information, the buyer of the information, the end-user of the information or a combination of all three is determinative of whether a transaction is for a commercial purpose.

22. Following passage of the act and as a consequence of the severe criminal and civil penalties that it authorizes, Verispan has decided to modify its databases so that it can identify and suppress the prescriber-identifiable data from New Hampshire prescriptions from its subscription services before the prescription information can be released to pharmaceutical companies or other third parties.

23. The Prescription Restraint Law defines a “commercial purpose” as “advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force.”

24. Enforcement of the Prescription Restraint Law will inflict irreparable injury on Verispan because it imposes criminal and civil penalties on entities who sell, license, or transfer to Verispan lawfully obtained, truthful information about matters of public importance and concern -- prescription records containing prescriber-identifiable data. Enforcement of the law ultimately will make it impossible for Verispan to obtain the information, to aggregate the information, to analyze the information, and to sell the information to pharmaceutical companies for use in their legitimate marketing efforts. Enforcement of the law also will inflict irreparable injury on the pharmaceutical companies that wish to obtain prescriber-identifiable data from Verispan so that they can use the information to focus their marketing efforts on those

prescribers who can most benefit from the marketing efforts. Most importantly, it prevents pharmaceutical companies from communicating important information to prescribers to help the prescribers make the best decisions they can make about the drugs that they will prescribe for their patients.

25. Ultimately, Verispan succeeds as a company only as long as it can continue to deliver valuable information that helps pharmaceutical companies and others efficiently deliver effective, innovative and safe healthcare products to the public. The Prescription Restraint Law directly impairs the ability of Verispan to fulfill that mission in New Hampshire.

Executed on July 27, 2006, in Yardley, Pennsylvania

_____/s/ Jody Fisher
Jody Fisher